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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: LOS ANGELES, CA

Date: JUN 18 2001

IN RE: Applicant: [REDACTED]

Application: Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. 1182(i)

IN BEHALF OF APPLICANT: [REDACTED]

Public Copy

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

INSTRUCTIONS:

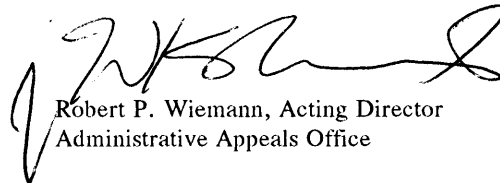
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud or willful misrepresentation in 1996. The applicant's mother is a lawful permanent resident of the United States and the applicant is the beneficiary of an approved petition for alien relative filed on her behalf by her United States citizen brother. The applicant seeks the above waiver in order to remain in the United States and adjust her status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel correctly states that the applicant is the beneficiary of an approved petition for alien relative filed on her behalf by her brother, not her father, and that the only qualifying relative in this case is the applicant's lawful permanent resident mother, not the applicant's children or her husband. Counsel asserts that the applicant's elderly mother would suffer extreme hardship if the applicant were removed from the United States.

The applicant admits to having sought to procure admission into the United States in November 1996 by presenting the United States birth certificate of her cousin. The record reflects that she was allowed to voluntarily return to Mexico and that she subsequently obtained entry into the United States without inspection. Other than the applicant's own admission, the record contains no evidence of her inadmissibility to the United States.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present time, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country;

the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In [REDACTED] 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The court held in [REDACTED] 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

On appeal, counsel states that the applicant's mother is a seventy-years-old widow who has lawfully resided in the United States for twelve years. The mother suffers from health problems with her knees, legs, feet, stomach, and vision and requires the assistance of a cane to walk. The applicant accompanies her mother to doctors' appointments and provides her mother with emotional and financial support.

Counsel submits documentation indicating that the applicant's mother has numerous family ties in the United States and states that the mother would suffer extreme hardship if the applicant were removed from the United States because she would be devastated if separated from her daughter and grandchildren. Counsel states that the applicant's mother is unable to relocate to Mexico with her daughter because she would lose her status as a lawful permanent resident of the United States.

While the mother's medical problems are unfortunate, there is no indication in the record that she has a significant condition of health, that the applicant's presence is integral to the care and treatment of her mother, or that suitable care and treatment is unavailable to the mother in Mexico. As noted by counsel, the applicant's mother has numerous family ties in the United States to provide her with emotional, physical and financial assistance. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. [REDACTED] 14 I&N Dec. 190 (Reg. Comm. 1972).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her mother would suffer extreme hardship over and above the normal social and economic disruptions involved in the removal of a family member. Hardship to the applicant herself, her husband, or her

United States citizen children or brother is not a consideration in this matter. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.